Surescripts EULA

Surescripts Services.   Allscripts is reliant on Surescripts in facilitating the provision of the "*Surescripts Services*" described in Schedule A (the "*Surescripts Specific Terms*"). If Surescripts modifies the Surescripts Services and such modifications require modifications to Allscripts software, the Surescripts Service may only be available on the then current version of the Allscripts software. In such case, Client must be on the then current version of the Allscripts software to access and use the Surescripts Services. Client must maintain compliance with such requirements at its own expense. Client's access to and use of the Surescripts Services is subject to the terms of the attached Surescripts Specific Terms and the other provisions of this Amendment. Notwithstanding anything else, (a) the Surescripts Services are third party service offerings provided to Client by Surescripts free of any charge from Allscripts and are not considered Allscripts Support Services, professional services, or any other services that Allscripts provides to Client pursuant to this Amendment or the Agreement, (b) Allscripts is not responsible for and shall have no indemnification or other form of liability for any activities engaged in by Surescripts (or any of its personnel) or any Software errors or problems to the extent they are caused by any Surescripts Services, and (c) all Surescripts Services are provided on an "As Is" and "As Available" basis. Notwithstanding anything else, Allscripts may, at any time, upon notice (although Allscripts will attempt to provide reasonable advance notice as is practical under the circumstances), cease facilitating the provision of any Surescripts Services upon termination of the license as set forth in <u>Section 2</u> of the Surescripts Specific Terms or if Surescripts ceases, for any reason, its participation in providing the Surescripts Services for Client hereunder. Allscripts shall include in any agreement with Surescripts a provision that Surescripts will perform its obligations under the agreement in a manner that complies with applicable law.

Schedule A – Surescripts Specific Terms

1.   **Definitions**.
1.1.   "**Applicable Law**" means any law, ordinance, regulation, rule, judgment, order, declaration, decree, directive, legislative enactment, or other binding requirement of or by any international, national, state, provincial, municipal, local, territorial or other governmental or quasi-governmental regulatory authority, department, or judicial or administrative body.   References to any Applicable Law refer to such Applicable Law in changed or supplemented form, or to a newly adopted Applicable Laws replacing a previous Applicable Law.
1.2.   "**Confidential Information**" means information relating to the providing party or its Affiliates and its or their business, financial condition, intellectual property and other assets, customers, vendors, capabilities, plans and strategies that is made available at any time (whether before or after the date hereof) by the providing party to Client or Client's representatives; all information in any form furnished or made available directly or indirectly by the providing party to Client by or through the Surescripts Services, including patient information, IIHI and other data or information provided by Participants; and the terms and conditions of these Surescripts Specific Terms.   Confidential Information shall not include any particular information that Client can demonstrate: was at the time of disclosure to it in the public domain; after disclosure to it, is published or otherwise becomes part of the public domain through no acts or omissions of Client; was in the possession of Client at the time of disclosure to it without obligation of confidentiality; was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further use or disclosure; or was independently developed by Client without reference to Confidential Information of the providing party.
1.3.   "**Data Source**" means a pharmacy benefit manager, health benefit payor or administrator or other similar entity which has entered into a written agreement with Surescripts to allow Allscripts and Client access to information in the Data Source's possession through the Surescripts Services.
1.4.   "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996, as amended, and related regulations.
1.5.   "**IIHI**" means all individually identifiable health information as defined by HIPAA that is provided directly or indirectly by or on behalf of Allscripts to Surescripts or vice versa.
1.6.   "**Participant**" means the Data Sources, prescribers, health care providers or facilities, pharmacies, information system vendors, or other entities, each of which has entered into a written agreement with Surescripts, or has the right through another entity's written agreement with Surescripts, to access, provide or communicate information through the Surescripts Services.
1.7.   "**Government**" or "**Governmental**" means a prescriber's decision to prescribe a certain pharmaceutical or direct a patient to certain pharmacy.
1.8.   "**Point of Care**" means the place and time that a prescriber or his/her agent is in the act of prescribing a pharmaceutical for a patient.

1.9. "**Prescriber End User**" means: an individual, located in the United States or a United States territory, that: (1) is employed by, an active member of the medical staff of, or otherwise performing healthcare services as a legally authorized representative of Client; and (2) if required by Applicable Law to be licensed, registered, or otherwise authorized by a Governmental authority, is properly and duly licensed, registered, or otherwise authorized with the appropriate Governmental authority to perform the applicable healthcare services.

1.10. "**Prescribing Decision**" means a prescriber's decision to prescribe a certain pharmaceutical or direct a patient to certain pharmacy.

1.11. "**Surescripts**" means SureScripts, LLC.

1.12. "**Surescripts Data**" means any data or information relating to Surescripts, or its services or operations, provided to Allscripts or Client by or on behalf of Surescripts, including statistics collected by Surescripts regarding transactions processed by the Surescripts Services, test data, test cases, configuration information and problem description and resolution information.

2.   **License**. Surescripts grants to Client a limited, nonexclusive, nontransferable right and license, without the right to grant sublicenses, solely in the United States, to access the functionality of the Surescripts Services as described in this Schedule A for the sole purpose of transmitting and receiving information relating to that functionality to and from Participants. Unless otherwise consented to in writing by Surescripts, this license terminates upon the earlier of (i) the termination of the Agreement, (ii) the date specified in a written notice to Client from Allscripts on which the agreement between Allscripts and Surescripts, as may be amended from time to time, terminates or expires, for any reason, (iii) the date specified in a written notice to Client from Allscripts on which Allscripts or the applicable Software fails to obtain or maintain certification from Surescripts that Allscripts or the applicable Software is compliant with the standards and specifications supported by the Surescripts Services, or (iv) if Client or end users who are required to be duly licensed or registered with the appropriate governmental authority to issue prescription orders cease to be duly licensed or authorized to issue prescription drug orders. Surescripts reserves all rights in and to the Surescripts Services not expressly granted to Client under this Section 2.

3.   **Restrictions on Use**. Client agrees not to, and not to permit any other person or entity to:

3.1.   use the Surescripts Services or any data accessed by the Client through the Surescripts Services except for the specific purposes identified in this Schedule A;

3.2.   reproduce, publicly display, publicly distribute, or create derivative works of the Surescripts Services;

3.3.   make any use of any data or information provided by Participants to Client by or through the Surescripts Services except for the specific purposes identified in this Schedule A and as expressly authorized in these Surescripts Specific Terms;

3.4.   attempt to capture, open, examine, modify, add commercial or other messages to, repackage, distribute, license, sell or make any commercial use of any data or information provided by Participants to Client by or through the Surescripts Services other than as specifically permitted under these Surescripts Specific Terms; and

3.5.   allow general public access to the Surescripts Services or allow any use of the Surescripts Services for the benefit of any person or entity not an end user who is duly licensed or registered with the appropriate governmental authority to issue prescription orders.

4. **Confidentiality**. Client will keep confidential any Surescripts or Participant Confidential Information as provided in the Agreement.

5. **Compliance with Law**. Client will act in a manner consistent with all applicable laws and regulations now or hereafter imposed. Client will use or disclose any IIHI obtained or sent through the Surescripts Services only in a manner consistent with all Applicable Law, including HIPAA and including obtaining any consents or authorizations required to be obtained by such Applicable Law, and that all consents and authorizations will allow disclosure of all data elements transmitted through the Surescripts Services whether or not Client intends to utilize such data elements.

6. **Audit**. Client will, upon thirty (30) days' prior written notice, no more frequently than one (1) time per calendar year, allow during normal business hours Allscripts, at its expense, and/or Surescripts, at its expense, to access, inspect, and audit records of the Client relating to the use of the Surescripts Services, Surescripts Data and data or information provided by Participants, provided that Client's auditors shall agree to maintain the confidentiality of Client's and Allscripts' information obtained by them in the course of their audit work.

7. **Message Transmission and Designation of Prescriber End Users**. Client shall implement the following standards for identity proofing and authentication for message transmission and designation of Prescriber End Users:

7.1 Message Transmission in General. Client shall conduct identity proofing and authentication sufficient to meet applicable regulatory requirements and reasonable industry standards to confirm that all messages transmitted via the Surescripts network originate from Prescriber End Users who are licensed to use the application for the service(s) for which Surescripts has certified the application, and Client shall retain and upon request, provide to Allscripts a list of Prescriber End Users who have been enrolled in the Surescripts Network.

7.2 Designation of Prescriber End Users. Client shall designate a Prescriber End User as such for purposes of this Agreement (i) only after confirming that such individual or entity meets the definition of a Prescriber End User set forth herein, and (ii) only subject to ongoing satisfaction of the identity-proofing and other requirements set forth above in Section 7.1.

8. **Commercial Messaging Rules**. Client shall not, and shall cause its Prescriber End Users not to, use any means, program, or device, or permit any other person to use any means, program, or device, including, but not limited to, advertising, instant messaging, and pop-up ads, to influence or attempt to influence, through economic incentives or otherwise, the Prescribing Decision of a prescriber at the Point of Care if: (i) such means, program, or device (as described above) is triggered by, initiated by, or is in specific response to, the input, selection, and/or act of a prescriber or his/her agent prescribing a pharmaceutical or selecting a pharmacy for a patient; and (ii) that prescription shall be delivered via the Surescripts network. Further, Client shall not modify or enable any Client software in such a manner as to intentionally permit a Client or its Prescriber End User to violate this Section 8. For purposes of clarity, this paragraph shall include, but is not limited to, the use of such means, program or device as may be prohibited by Governmental law or regulation. For the avoidance of doubt, any violation of this section by Client shall be deemed a material breach of this Agreement.

9.   **Disclaimers**. SURESCRIPTS DOES NOT PROVIDE ANY EXPRESS WARRANTIES OR IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

SURESCRIPTS USES AVAILABLE TECHNOLOGY TO MATCH PATIENT IDENTITIES WITH THEIR PRESCRIPTION DRUG BENEFIT AND PRESCRIPTION DRUG RECORDS IN ORDER TO PROVIDE PHYSICIANS WITH PATIENTS' PRESCRIPTION DRUG BENEFIT AND MEDICATION HISTORY INFORMATION. BECAUSE PATIENT INFORMATION IS MAINTAINED IN MULTIPLE PLACES, NOT ALL OF WHICH ARE ACCESSIBLE TO SURESCRIPTS, AND BECAUSE NOT ALL PATIENT INFORMATION IS KEPT IN A STANDARD FASHION OR IS REGULARLY UPDATED, IT IS POSSIBLE THAT FALSE MATCHES MAY OCCUR OR THAT THERE MAY BE ERRORS OR OMISSIONS IN THE PRESCRIPTION DRUG BENEFIT OR MEDICATION HISTORY INFORMATION. THEREFORE, ANY TREATING PHYSICIAN OR OTHER HEALTH CARE PROVIDER OR FACILITY SHOULD VERIFY PRESCRIPTION DRUG BENEFIT OR MEDICATION HISTORY INFORMATION WITH EACH PATIENT AND/OR THE PATIENT'S REPRESENTATIVES BEFORE SUCH INFORMATION IS RELIED UPON OR UTILIZED IN DIAGNOSING OR TREATING THE PATIENT. SURESCRIPTS IS NOT A HEALTH PLAN, HEALTH CARE PROVIDER OR PRESCRIBER. NEITHER SURESCRIPTS NOR ALLSCRIPTS DOES OR CAN INDEPENDENTLY VERIFY OR REVIEW THE INFORMATION TRANSMITTED THROUGH THE SURESCRIPTS SYSTEM FOR ACCURACY OR COMPLETENESS.

NEITHER SURESCRIPTS NOR ALLSCRIPTS MAKES ANY REPRESENTATION OR WARRANTY REGARDING THE AVAILABILITY THROUGH THE SURESCRIPTS SERVICES OF ANY PARTICULAR DATA SOURCE OR OTHER PARTICIPANT. AT ANY TIME, DATA SOURCES OR OTHER PARTICIPANTS MAY BE ADDED TO OR DELETED FROM THE SURESCRIPTS SERVICES OR MAY LIMIT ALLSCRIPTS AND/OR CLIENT ACCESS TO THEIR DATA, AND SUCH CHANGES MAY OCCUR WITHOUT PRIOR NOTICE TO ALLSCRIPTS OR CLIENT.

10.   **Prescriber Data**. Surescripts may utilize, transfer, or disclose aggregated prescriber information, including, but not limited to, summary statistics, which has been de-identified, so long as (i) Surescripts is not paid for such information and (ii) such information is related to reporting on SureScripts' operations.

The Surescripts PRN Services are designed to allow authorized persons and entities to access benefit and other information about patients. This Schedule A -1 describes the PRN Services and sets out additional terms and conditions applicable to them.

I.   PRN SERVICES. The Surescripts PRN Services include:

A. Foundation infrastructure, including interface specifications, transaction routing infrastructure, Participant management services and error management services.

B. Patient identification services in which Surescripts uses membership information provided by Data Sources to build a Master Patient Index ("**MPI**") database. Surescripts utilizes a search process with basic demographic information submitted by Allscripts or Client to identify the patient in Surescripts' MPI.

C. Formulary distribution services, which allow downloading of formularies and basic benefit coverage information if available. The formulary files are organized by the Data Sources and contain file identifiers which should allow linking of information to a particular patient referenced in an eligibility transaction.

D. Activity reporting, through which Allscripts provides activity reports to the Data Sources that supply eligibility and benefits information. Activity reporting supports tracking of prescription information (no IIHI is included) to assess the impact of e-prescribing on measures such as formulary compliance and pay-for-performance programs. Surescripts offers these services via a standard data format for exchange of information and provides a secure central distribution point for transferring reports.

E. Patient visit services.   The following services may be accessed by Client only in connection with the treatment of a specific patient in a scheduled or walk-in outpatient visit or another specific treatment event. Client shall not access or attempt to access these services in connection with any inpatient or other acute service or in connection with any institutional service.
   1. Eligibility status transaction allows Client to match a patient to his/her pharmacy benefit through a request/response transaction based on X12 270/271 transaction standards.
   2. Medication history transaction allows Client to request medication history for a specific patient utilizing the National Council for Prescription Drug Programs ("**NCPDP**") transaction segment syntax then implemented by Surescripts.
   3. Formulary coverage status transaction allows Client to use information on the eligibility status transaction response to request formulary and coverage status for a specific drug for a specific patient utilizing the NCPDP transaction segment syntax then implemented by Surescripts.

The SIG Services are designed to allow Client to perform electronic prescribing transactions. This Schedule A -2 describes the SIG Services and sets out additional terms and conditions applicable to them.

I. SERVICES. The SIG Services include:

    A. Foundation infrastructure, including interface specifications, transaction routing infrastructure, Participant management services and error management services.

    B. Provider directory services, including access to a list of all pharmacies and/or prescribers who may be communicated with through the Surescripts Services and including a provider update transaction which may be used by Participants to provide Surescripts with information required to route NCPDP transactions.

    C. NCPDP SCRIPT transaction services, including routing a standard NCPDP SCRIPT new prescription transaction, a standard NCPDP SCRIPT prescription refill/renewal request transaction, from the prescriber to a connected pharmacy, selected by the prescriber and patient, via the Surescripts Services.

ELECTRONIC PRESCRIPTION MESSAGING ("ePresription") SERVICES – RETAIL

The ePrescription Services are designed to allow Client to perform electronic prescribing transactions. This Schedule A-3 describes the ePrescription Services and sets out additional terms and conditions applicable to them.

I. SERVICES. The ePrescription Services include:

    A. An electronic representation, in the format and with the content required for processing through the proprietary Surescripts technology for transmitting such electronic representations, of (i) a prescription drug order issued by a duly licensed practitioner (such as a physician, nurse practitioner or physician's assistant), (ii) a request for a refill order issued by a pharmacy, (iii) any other message type supported by the NCPDP SCRIPT standard, or (iv) other message types as made available by Allscripts to Client.

II. USE OF INFORMATION. Client agrees that Surescripts shall be entitled to disclose information received from Allscripts, Client or end users for the purpose of (and only to the extent necessary for) providing the ePrescription Service, but only in accordance with all applicable laws and regulations, or pursuant to a valid order issued by a duly authorized court or government authority.